

REMARKS

The present amendment is submitted concurrently with a Request for Continued Examination. The amendments and remarks presented are in response to an Advisory Action mailed October 7, 2005 and a Final Office Action mailed June 3, 2005, where the Examiner has rejected claims 1-38. By the present amendment, claims 1, 6, 19, 20, and 38 have been amended, and claims 4 and 5 have been canceled without prejudice to further prosecution. Accordingly, claims 1-3 and 6-38 are pending in the present application. Reconsideration and allowance of the pending claims in view of the amendments and the following remarks are respectfully requested.

A. Rejection of claims with Reference to McGuire

In a first office action mailed January 4, 2005, and again in the Final Office action, the Examiner rejected claims 1-38 under 35 U.S.C. §103(a) by citing to McGuire (US pat. no. 6,493,8710), and one or more other teaching references. In its April 19, 2005 and August 3, 2005 Responses, the applicant provided extensive evidence and remarks that McGuire was non-analogous art, and requested that McGuire be removed as a reference. In the Advisory Action, the Examiner maintained the rejections over McGuire.

In maintaining the rejection in the Advisory Action, the Examiner states that "actually, when addressing system software, run-time engine, system data, receiving dynamic instruction sets, and installable memory module, etc., they are all considered as computer system configuration." Although the applicant does not agree with this interpretation, to expedite prosecution of this application, the applicant has amended the pending claims to further emphasize that the claimed "wireless telephone" and methods is not analogous to McGuire's "computer system configuration". More specifically, the applicant has amended claims 1, 19, 20, and 38 to more clearly recite "wireless telephone" structures and process within the claim limitations.

The applicant respectfully requests that the Examiner reconsider the reading of McGuire, and remove it as non-analogous art. In support of this request for reconsideration, the applicant notes that in the continuation of paragraph 11 of the Advisory Action, the Examiner finds that the "wireless telephone" as claimed is "considered as computer system configuration". In maintaining these rejections, the Examiner refers to a single sentence in McGuire that states:

Moreover, those skilled in the art will appreciate that the invention may be practiced with other computer system configurations, including hand-held devices, multiprocessor system, microprocessor based or programmable consumer electronics, network PC's minicomputers, mainframe computers, and the like. (McGuire, col. 5, Ins. 31-35.)

First, the applicant respectfully submits that the above sentence as a whole leads to a conclusion that a "wireless telephone" is not analogous to the "computer system configurations" disclosed in McGuire. The sentence is structured so that each of the identified species falls within the defined genus of "computer system configurations". Take for example the "consumer electronics" species. McGuire took care to exclude most all consumer electronics by including only "microprocessor based or programmable" devices. In a similar manner, "hand-held devices" would not include every type of hand-held device, but only those that fell within the category of "computer system". With a wireless device's more limited processing resources, it is not reasonable that McGuire would have considered it a "computer system". In order for the sentence to remain internally consistent, "hand-held" device can not be interpreted to include a "cellular phone".

Second, the Examiner fails to show any indication that McGuire considered, discussed, or envisioned any type of cellular phone. As more fully set out in its August 3, 2005 response to the Final Office Action (Section B(2)), a wireless communication device has unique memory, processor, and processing requirements. These requirements, such as having to manage call processing, are not present in any of the devices listed or taught by McGuire. Therefore, the applicant submits that there is no justification for including a "cellular phone" as

having been taught by merely identifying a "hand-held device". As stated in that August 3, 2005 response, "McGuire does not teach a hand-held wireless communication device -- only a hand-held computer system configuration".

Finally, one common linguistic canon, *noscitur a sociis*, tells us that the meaning of an ambiguous word in a list may be ascertained by the words that surround it. See, *Black's Law Dictionary or dictionary.com*. Here, the phrase "hand-held device" is included in a list with such phrases as multi-processor system, minicomputer, mainframe, and programmable consumer device, for example. These devices generally define computer systems with memory, processor, and processing requirements consistent with hand-held computers, notebook computers, and laptop computers, but entirely inconsistent with a cellular phone. Accordingly, it is inconsistent with standard language interpretive devices to conclude that "hand-held device" includes a "cellular phone".

In the continuation of paragraph 11 of the Advisory Action, the Examiner makes several statements that the applicant respectfully submits overstates the limited teachings of McGuire and Hansson. For example:

Examiner statement: *Hanson's disclosure teaches a method installing software to a wireless telephone, which has the same challenges of "much less memory available, much less information receiving bandwidth and more limited processing power".*

Applicant comment: Hansson does not disclose a wireless telephone with limited memory. Instead, Hansson has a wireless handset that has two separate memories, each sized to hold and operate the device's entire system software. (See, Hansson, col. 2, Ins. 15-40). This doubles the memory requirement for system software, which the applicant submits is not appropriately considered a wireless device with "much less memory available".

Examiner statement: *Both McGuire and Hanson are analogous arts, since ... both of their teachings trying to install/upgrade software to a wireless device.*

Applicant comment: McGuire does not teach or disclose a device that receives install or upgrade software using a wireless air interface connection.

Examiner statement: *the Wang and Allen-Bradley Company cases don't apply to this argument since Hanson's disclosure is for a wireless telephone, which also has limited memory size.*

Applicant comment: Hansson does not disclose a wireless telephone with limited memory. Instead, Hansson has a wireless handset that has two separate memories, each sized to hold and operate the device's system software. (See, Hansson, col. 2, lns. 15-40). This doubles the memory requirement for system software, which the applicant submits is not appropriately considered a wireless device with "much less memory available".

Since McGuire never considered a wireless device, and a wireless device is non-analogous to a computer system, the applicant respectfully requests that the Examiner remove McGuire as a reference.

B. Response to U.S.C. §103 Rejections

The applicant believes that McGuire is non-analogous art, and should be removed as a reference. Accordingly, without the teachings of McGuire, the §103 rejections are not maintainable. As shown below, all the rejections are made over McGuire, in view of one, two, three, or four other references.

More specifically, the Examiner rejects:

Claims 1-5 over:

- 1) US Patent 6,493,871 (McGurire); &
- 2) US Patent 6,023,620 (Hansson).

Claims 20-23, 38 over:

- 1) US Patent 6,493,871 (McGurire);
- 2) US Patent 6,023,620 (Hansson); &
- 3) US Patent 5,930,704 (Kay).

Claims 6-9, 19, 24-28 over:

- 1) US Patent 6,493,871 (McGurire);
- 2) US Patent 6,023,620 (Hansson);
- 3) US Patent 5,930,704 (Kay) &
- 4) US 2002/0019973 (Hayashida)

Claims 10-18, 29-37 over:

- 1) US Patent 6,493,871 (McGurire);
- 2) US Patent 6,023,620 (Hansson);

Claims 10-18, 29-37 over:

- 1) US Patent 6,493,871 (McGurire);
- 2) US Patent 6,023,620 (Hansson);
- 3) US Patent 5,930,704 (Kay)
- 4) US 2002/0019973 (Hayashida) &
- 5) US Patent 6,442,660 (Henerlau)

The applicant has amended independent claims 1, 19, 20, and 38 to include specific limitations directed to structures and process for the "wireless telephone". The subject matter of claim 4 has been included with claim 1, so claim 4 has been cancelled. The applicant also cancels claim 5 without prejudice to further prosecution.

C. Conclusion

The applicant believes the pending claims are patentably distinguishable over these references. For all the foregoing reasons, an early allowance of claims 1-3 and 6-38 pending in the present application is respectfully requested.

Respectfully submitted,

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